

# LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

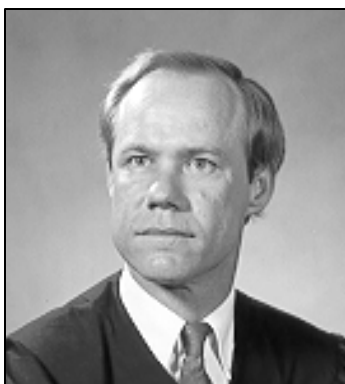
FEBRUARY 2001, No. 10

DEPARTMENT OF PUBLIC ADVOCACY

## BOWLING GREEN DEFENDER OFFICE OPENS



(l-r) Richie Sanders, Rob Wilkey, Brett Guthrie, Ernie Lewis, Peter Gray-Whitely, Jody Richards and Ron McCloud at the Bowling Green Grand Opening



Chief Justice Joseph E. Lambert

## THE ROLE OF THE KENTUCKY COURT OF JUSTICE IN SUPPORTING INDIGENT DEFENSE

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# GENERAL ASSEMBLY MEMBERS OPEN BOWLING GREEN OFFICE

by Ernie Lewis, Public Advocate

Four members of the Kentucky General Assembly helped the Department of Public Advocacy formally open the DPA Bowling Green Office on December 4, 2000. **Speaker of the House Jody Richards** gave the keynote address. He was joined by **Senator Brett Guthrie**, **Senator Richie Sanders**, and **Representative Rob Wilkey**.

Speaker Richards spoke of the importance of adequate funding for indigent defense. He commended the work of the Department of Public Advocacy for establishing the *Blue Ribbon Group* which championed indigent defense and convinced Governor Patton to add an additional \$10 million dollars to DPA's budget over the biennium. He noted that he and Governor Patton were committed to providing the leadership to secure additional funding to DPA to complete the recommendations of the *Blue Ribbon Group*. He welcomed DPA to the Warren County Justice Center.

**Senator Sanders** echoed the words of the Speaker. He expressed that it had been a privilege to work with the Department of Public Advocacy during the 2000 General Assembly. He also welcomed the Department to Bowling Green, and particularly to the new counties surrounding Warren County.

**Senator Guthrie** also spoke of the importance of indigent defense. He noted that as a member of the Appropriations and Revenue Committee, he had seen first-hand the need for additional funding for DPA.

**Rep. Rob Wilkey** stated that as a member of the A&R Committee as well as the Judiciary Committee, I am aware of the wonderful job that public defenders have done and are doing to represent the indigent citizens of Allen, Simpson, and Warren Counties. It has been a privilege to fight for funding and an honor to be instrumental in getting this office opened."

Public Protection and Regulation Cabinet Secretary **Ron McCloud** spoke on behalf of Governor Paul Patton. He stated that the Public Advocate's "vision has always been that public defenders should be paid a decent wage and that every county in Kentucky would have a full-time public defender office- and his dream is coming true. Ernie worked with the administration and with the General Assembly.. Today we are celebrating the fruits of his labor.. Being housed in the Warren County Justice Center where every other entity of the criminal justice system is located- will be a great advantage for our public defenders. Having access to court officials will enhance DPA's mission and help us provide the best defense opportunities to indigent people in the 5-county area."

Trial Division Director **George Sornberger** recognized the excellent work of the part-time contractors over the past 20 years. Presented with DPA Service Awards were **Kelly Thompson**, **Stephen Todd**, **Terry Boeckmann**, **Gregory Injeian**, **Leslie Bucklew**, **Claire Injeian**, **Clint Willis**, **Robert Wade**, **Hillary Hightower**, and **Wesley Milliken**.

Over 75 dignitaries, court officials, and community members were present in the Warren County Justice Center to recognize the move of the Bowling Green Office into the Justice Center. That office, which began in July of 1999, was funded by the 1998 General Assembly. In FY 2000, the Office opened 3353 cases, and was staffed with 4 lawyers. The Acting Directing Attorney of the office is **Peter Gray-Whiteley**.

The 2000 General Assembly, in recognition of the recommendations of the *Blue Ribbon Group* and Governor Patton's budget, funded the Bowling Green Office to cover the surrounding counties. As of January 1, 2001, the Bowling Green Office began covering not only Warren County, but also Simpson, Allen, Butler, and Edmonson Counties. The General Assembly funded an additional 4 lawyers to assist in covering this caseload. Due to the high caseload in Warren County, the Department announced at the opening that an additional lawyer, totaling 8, would be added from agency resources. Overnight, this office has become one of DPA's largest and busiest. ■



Rob Wilkey, Richie Sanders, Brett Guthrie,  
Jody Richards, Ron McCloud and Ernie Lewis

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# THE ROLE OF THE KENTUCKY COURT OF JUSTICE IN SUPPORTING INDIGENT DEFENSE

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by Chief Justice Joseph E. Lambert

Since becoming Chief Justice in October of 1998, one of my primary goals has been the improvement of public trust and confidence in the Kentucky justice system. At the direction of the Conference of Chief Justices and the National Center for State Courts, a study was completed by the Hearst Corporation that revealed that, although two-thirds of white citizens believe that the justice system treats them fairly, over two-thirds of African-American citizens do not. In addition, an alarming majority of our nation's citizens believe that economic circumstances affect individual justice, and that those with money receive different treatment than those without. Although providing indigent defendants with effective defense counsel is not always a popular expenditure of state funds, it is necessary to the proper administration of justice.

One of the most persistent barriers in the defense of indigent defendants has been adequate funding. I am proud to have been a member of the *Blue Ribbon Group* that sought and obtained a substantial increase in funding from the 2000 Kentucky General Assembly. Public defender salaries will be raised, collectively, by \$1.2 million in FY '01 and \$2.6 million in FY '02. Several million dollars more will be utilized for systemic changes to benefit the delivery of legal services, including more attorneys to assist with the burgeoning caseload of the public defender system. In all, over \$10 million dollars in new monies for the 2000-2002 biennium was appropriated for Kentucky's Department of Public Advocacy. Many of the dramatic changes that these funds were intended to cause have now been put into place. While the progress we have made is an important step in achieving and maintaining the balance necessary for a fair and equitable criminal justice system, more work needs to be done.

In addition, I was proud to be a part of a small group from Kentucky, organized by Public Advocate Ernie Lewis, that attended the second annual National Symposium on Indigent Defense in Washington, D.C. convened by the U.S. Department of Justice (DOJ). At the conference, representatives from all 50 states and several territories, and most importantly from all three branches of government, met to discuss the needs of every state to provide adequate representation for the poor. As Attorney General Reno pointed out, "[o]ur system [of criminal justice] will work only if we provide every defendant with competent counsel."

The right to representation means more than the appointment of counsel. As shown by a recent Columbia Law School report, almost 40% of the death penalty convictions handed down between 1973 and 1995 were overturned on appeal based, in part, on ineffective assistance of counsel. Perhaps

we are at a unique time in this nation to consider these questions. Our country's citizens, it seems, have begun a discussion of whether innocent persons have been and are being convicted. A necessary function of this discussion will be adequate representation of all, with less emphasis on the cost of representation, and more emphasis on need.

So, too, the public demands assistance from the court to fight many societal ills. No longer are the courts viewed as arbiters of simple guilt or innocence. As many of society's traditional resources for solving problems are failing, the court system is being looked to for help. While some dismiss this type of "restorative justice," I believe that the Kentucky Court of Justice must do all it can to contribute to the improvement of our Commonwealth, which includes assistance, where appropriate, to its citizens.

A prime example of this philosophy is the continued expansion of drug courts. While many individuals convicted of drug offenses need to go to prison, some do not. With stringent oversight, including routine drug testing, counseling, education and vocational training, and requiring participants to support their families financially, individuals who would otherwise be on their way to a life of prison and crime may instead be returned to productive membership in society.

In addition, Kentucky's family courts work to prevent as many problems as they face. Often, the problems facing one member of a family do not exist in a vacuum. For example, a spouse charged with abuse may also have drug or alcohol dependency. Children of that marriage may be truant from school. By allowing one judge to deal with the many issues facing one family, it is hoped that this "macro" approach to dealing with the problems, as a whole, will ultimately resolve those problems not yet realized.

I've often said that the Kentucky Court of Justice, as the Judicial Branch of state government, has neither the sword nor the purse. We must depend on public esteem, for without it, all of government will suffer. As Alexander Hamilton has said:

[T]he ordinary administration of civil and criminal justice contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence toward the government.

This is not a trivial or trifling subject. Nor is it merely a matter

*Continued on page 4*

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of professional integrity. Respect for the law and the institutions that administer law directly protects the freedom of our nation. More than half a century ago, Senator Robert A. Taft of Ohio spoke of freedom under law. He said:

Unless there is law, and unless there is an impartial tribunal to administer that law, no man can be really free. Without them only force can determine controversy . . . and those who have not sufficient force cannot remain free. Without law and an appeal to a just and independent court to interpret that law, every man must be subject to the arbitrary discretion of his ruler or of some subordinate government official.

The Kentucky Court of Justice has a duty to see that all persons, regardless of economic or social status, have equal access to our Courts. And once they have gained access, it is also our duty to assure that fair treatment continues throughout the process. Poor persons charged with crimes are Kentucky's most vulnerable citizens and it is our duty to see that they are treated fairly and with respect.

The issues of indigent defense are being recognized as larger than the question of whether the state will pay for representation. That recognition includes the realization of both the economic as well as the moral costs of failing to provide a minimum of representation.

It is my pledge that, as Chief Justice, I will continue to support the efforts of the Department of Public Advocacy to provide an adequate defense to all of our Commonwealth's citizens. ■

"It is one of the most beautiful compensations of life, that no man can sincerely try to help another without helping himself."

- Ralph Waldo Emerson

"It is not fair to ask of others what you are not willing to do yourself."

- Eleanor Roosevelt

## **104 COUNTIES ARE NOW PART OF A FULL-TIME OFFICE**

**by Ernie Lewis, Public Advocate**

On January 1, 2001, the Department of Public Advocacy began to cover an additional 22 counties from an existing full-time defender office. As of that date, 104 of Kentucky's 120 counties were covered from one of 26 full-time defender offices. In 1996, when Ernie Lewis became Public Advocate, only 47 counties were served by a full-time office, with the remaining 73 counties being served by part-time lawyers on a contract. Five years later, the Department of Public Advocacy is within sight of its goal: coverage of all 120 counties by 2004 by a full-time office.

It was in 1990 that the Public Advocacy Commission first stated that Kentucky should move toward a full-time system at the trial level and away from the prevalent contract method. That goal was repeatedly frustrated by problems mostly related to chronic under-funding even at a time when Commonwealth's Attorneys were moving increasingly toward full-time status.

When Ernie Lewis became Public Advocate, the Public Advocacy Commission's goal became his first priority. The 1998 General Assembly made significant progress toward meeting this goal. By the end of the 1998-2000 biennium, that General Assembly had funded an additional 5 offices in Bowling Green, Owensboro, Columbia, Paintsville, and Maysville. By July 1, 2000, 82 counties were covered by a full-time defender office.

It was the 2000 General Assembly which most completely addressed the needs of indigent defense. The 2000 General Assembly fully funded Governor Patton's budget which placed an additional \$10 million into DPA's budget over the biennium. This budget was in response to the recommendations of the *Blue Ribbon Group*. The \$10 million was for two primary purposes: to raise public defender salaries, and to partially complete the full-time defender system. Recommendation #3 of the *Blue Ribbon Group* reads: "The Full-Time System should be completed." That recommendation was funded significantly by the 2000 General Assembly.

Eight of DPA's offices were expanded on January 1, 2001. The Bowling Green Office's coverage area expanded to include not only Warren but also Simpson, Allen, Butler, and Edmonson Counties. The Owensboro Office expanded from Daviess County to include Hancock and Ohio Counties. The Elizabethtown Office expanded to include not only Hardin,

By the end of this biennium, 109 of Kentucky's counties will be covered by a full-time office. That will leave only 11 counties to be funded by the 2002 General Assembly. At that time, DPA will ask for funding to complete the system by opening 3-4 additional offices in Cynthiana, Glasgow, Boone County, and perhaps Greenup County.



The counties showed below are covered by a DPA full-time office. ■

[illegible]

## Kentucky Innocence Project

### Established by Department of Public Advocacy

If an inmate's case satisfies all the four criteria, he or she is sent a detailed 20-page questionnaire for specific information about the case.

The Department of Public Advocacy (DPA) has responded to the public's concern about innocent people behind bars by creating the *Kentucky Innocence Project* (KIP). The KIP assists those in Kentucky's prisons who declare their actual innocence and who have new evidence to support their innocence.

The nation has been startled by the repeated reports of innocent people being freed from prisons all across the country. The shock comes not from the justified release of innocent people, but from the sheer numbers of actually innocent people found in the nation's prisons.

Kentucky has experienced the uncovering and freeing of the innocent. William Gregory, a 45 year old Jefferson County man was convicted and sentenced to 70 years for the rape of a 70-year old woman in 1992. New DNA tests proved he did not commit that crime for which he served 8 years. Innocent people have been sent to prison in Kentucky. No Kentuckian wants an innocent person incarcerated.

Kentucky's KIP is modeled after successful programs such as the Innocence Project at Cardoza Law School under the direction of Barry Scheck, the Innocence Project Northwest at the University of Washington School of Law and the Center for Wrongful Convictions at Northwestern University. It utilizes volunteer students from Kentucky universities and law schools. Gordon Rahn of DPA's Eddyville post-conviction office is coordinating this DPA effort with the oversight of post-conviction branch manager, Marguerite Thomas and the direction of DPA Post-Trial Director Rebecca DiLoreto.

Funding for the project comes from a grant from the Kentucky Bar Association (to cover travel and phone expenses for volunteers) and the already established DPA post-conviction branch budget.

Professor Roberta Harding has led the way to establish a course at the University of Kentucky Law School. Planning is underway to establish programs to meet the needs of the students and the colleges at the University of Louisville Brandeis School of Law and Salmon P. Chase Law School at Northern Kentucky University with an anticipated date of the fall of 2001.

Criteria for consideration by KIP is substantial:

- Kentucky conviction and incarceration;
- Minimum 10 year sentence;
- Minimum of 3 years to parole eligibility OR if parole has been deferred, a minimum of 3 years to next appearance before the parole board; and
- New evidence discovered since conviction or that can be developed through investigation.

DNA testing and challenges of the Innocence Project at Cardoza Law School led by Barry Scheck and Peter Neufeld have demonstrated there are in prison those that are innocent. DNA has exonerated 79 people in the past few years. National estimates put the number of innocent people incarcerated in the nation's prisons between 4%-10%. Scheck and Neufeld in their book, *Actual Innocence* (2000) list the factors they found led to wrongful convictions:

- 1) Mistaken eyewitness identification;
- 2) Improper forensic inclusion;
- 3) Police and prosecutor misconduct;
- 4) Defective and fraudulent science;
- 5) Unreliable hair comparison;
- 6) Bad defense lawyering;
- 7) False witness testimony;
- 8) Untruthful informants;
- 9) False confessions.



Race plays a role in this process. Scheck and Neufeld reported in *Actual Innocence* that the race of the exonerated defendants was: 29% Caucasian; 11% Latino; and 59% African American.

George F. Will in an April 6, 2000 Washington Post review of *Actual Innocence* recognized the importance of wrongly convicting the innocent and the affect of *Actual Innocence* when he said, "It should change the argument about capital punishment...You will not soon read a more frightening book...Heartbreaking and infuriating." The Sunday, Sept. 15, 2000 Boston Globe said of *Actual Innocence*, "One of the most influential books of the year...shocking...compelling...an objective reference for partisans of all stripes."

Americans want the wrongly convicted to be able to prove their innocence with scientific testing. A Gallup poll, conducted March 17-19, 2000 finds "that 92% of Americans say those convicted before the technology was available should be given the opportunity to submit to DNA tests now — on the chance those tests might show their innocence. Support for this position runs solidly across all demographic groups, as well as all political ideologies.... Mark Gillespie, "Americans Favor DNA 'Second Chance' Testing for Convicts:Nine in ten Americans support genetic testing to resolve long-held claims of innocence," GALLUP NEWS SERVICE, <http://www.gallup.com/poll/releases/pr000601b.asp>.

The Department of Public Advocacy continues to work to effectively represent Kentucky's indigent, especially those wrongly convicted. ■

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## Kentucky Corrections Commissioner Retires

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**FRANKFORT** (Dec. 6, 2000) – Governor Paul Patton announced the retirement of Corrections Commissioner Doug Sapp, a 27-year veteran of state government, and the appointment of Tom Campbell as his replacement.

“Doug Sapp came out of retirement to be a part of my administration and to serve the people of our state. He is a model public servant whose dedication, knowledge and friendship will be missed,” Patton said. “Having said that, Tom Campbell is an experienced professional who has a long history of accomplishments and is certainly up to the challenges of this job.”

“Sapp is probably the hardest working employee I have ever had the pleasure to work with in state government,” Justice Secretary Robert F. Stephens said. “He could solve any situation or problem that occurred in his agency. I really hate to see him leave, but the mark he has left on the department of corrections and the Patton Administration will continue for years to come.”

Public Advocate Ernie Lewis said, “Doug Sapp will be missed. He brought to the Department of Corrections a person who knew the system from top to bottom, a person who believed in the worth of each inmate and each employee under his direction, and a person who never lost his sense of balance and sense of humor.”

As Sapp prepares to return to his home in Adair County at the end of the year, his successor, Tom Campbell, will be leaving his current position as executive director of the parole board and preparing himself to oversee the 3,800-plus employees in the department of corrections.

“I cannot think of another person more qualified than Campbell to continue the success of the department’s programs,” Stephens said. “Campbell is a veteran employee of corrections, where he began his state government career in 1972, so he has the knowledge and respect to be an outstanding commissioner.”

Sapp became commissioner of corrections in April of 1996. Since that time, he has successfully established programs such as the VINE (Victim Information and Notification Everyday) system, KOOL (Kentucky Offender Online Lookup) system, the Thoroughbred Retirement program at Blackburn Correctional Complex, the automation of the probation and parole case management system and expanded community supervision through electronic monitoring. Most of all, he has been the employees’ biggest supporter for improved working conditions and compensation and has championed their causes whenever possible.

of the Department,” commented Sapp on his replacement. “He has a wealth of knowledge and insight into the many issues affecting this agency which will prepare him to do a outstanding job in managing the department.”

Campbell began his career in corrections in 1972 as recreation director at the Kentucky Correctional Institution for Women. He was promoted to classification and treatment officer before being transferred to Blackburn Correctional Complex where he served as unit director until March 1979.

At that time, he transferred to the Kentucky State Reformatory where he served as deputy warden in various capacities until December 1990, when he was appointed to the position of deputy commissioner for adult institutions in Frankfort and remained there until February 1992.

From February 1992 until December 1992, he served as director for institutional operations and interim warden at Blackburn Correctional Complex. He was then appointed to the position of warden at Luther Luckett Correctional Complex in LaGrange.

In May 1994, he opened the state’s newest prison, Green River Correctional Complex in Central City, as warden and remained there until June 1996, when he returned to Frankfort as deputy commissioner for adult institutions.

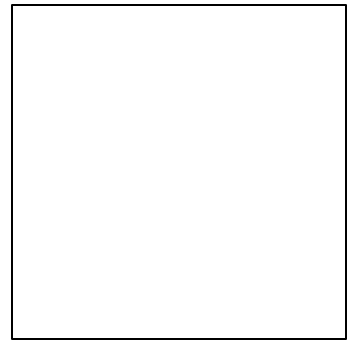
Mr. Campbell retired from state service in July 1999 but returned as the executive director of the parole board in October 1999.

“I am very excited about heading the department and working with its outstanding base of employees,” Campbell said. “I have learned a lot over my career in state government and especially during the three years I worked directly with Commissioner. He leaves a tremendous legacy that will be difficult to follow, but I look forward to the challenge.” ■

“Tom’s extensive career in corrections provides him a broad perspective



*Doug Sapp*



*Tom Campbell*



## *The Blue Ribbon Group*

# **"Improving Indigent Defense for the 21<sup>st</sup> Century"**

sponsored by the public advocacy commission and kentucky department of public advocacy

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### *Legislative Update*

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